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EXAMINER

FRENEL, VANEL

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

5

Office Action Summary

Application No.

09/638,089

Applicant(s)

MURPHY, DANNY

Examiner

Vanel Frenel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/05/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/05/04 has been entered.

Notice to Applicant

2. This communication is in response to the amendment filed 1/05/04. Claims 22-48 have been cancelled. Claims 49-97 have been added. Claims 49-97 are pending.

Claims Numbering

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 78-97 are now renumbered as claims 77-96. Appropriate correction is required in the next correspondence.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 49-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaplan (5,963,916) in view of Leeke et al (6,587,127).

(A) As per claim 49, Kaplan discloses a method for collecting and providing access to consumer music preference information (See Kaplan, Col.1, lines 17-67 to Col.2, line 67), comprising the steps of: providing a server computer system for receiving and storing demographic and geographic information associated with a plurality of consumers, for receiving and storing music information associated with a plurality of music products, for receiving and storing consumer music preference information associated with the plurality of music products and the plurality of consumers (See Kaplan, Col.4, lines 20-67 to Col.5, line 24; Col.15, line 40-67 to Col.16, line 67); providing a consumer interface to the server computer system that allows the plurality of consumers to input demographic and geographic information into the server computer system, to access and review music information regarding music products stored on the server computer system, and to input consumer music preference information regarding the music products into the server computer system (See Kaplan, Col.4, lines 20-67 to Col.5, line 24; Col.15, line 40-67 to Col.16, line 67); or a music retailer interface to the server computer system that allows a music retailer to access all of the consumer music

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preference information stored on the server computer system (See Kaplan, Col.4, lines 20-67 to Col.5, line 24; Col.15, line 40-67 to Col.16, line 67).

Kaplan does not explicitly disclose providing at least one of the following: a record label interface to the server computer system that allows a record label to access consumer music preference information associated with music products produced by the record label and stored on the server computer system; a radio station interface to the server computer system that allows a radio station to access consumer music preference information associated with music products used by the radio station and stored on the server computer system.

However, these features are known in the art, as evidenced by Leeke. In particular, Leeke suggests providing at least one of the following: a record label interface to the server computer system that allows a record label to access consumer music preference information associated with music products produced by the record label and stored on the server computer system (See Leeke, Col.6, lines 3-67 to Col.7, line 37; Col.29, lines 4-67 to Col.30, line 67; Col.41, lines 12-67 to Col.42, line 67); a radio station interface to the server computer system that allows a radio station to access consumer music preference information associated with music products used by the radio station and stored on the server computer system (See Leeke, Col.6, lines 3-67 to Col.7, line 37; Col.29, lines 4-67 to Col.30, line 67; Col.41, lines 12-67 to Col.42, line 67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Leeke within the system of Kaplan with the

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motivation of providing archived items such as archived radio programs, speeches, and music via the Internet (See Leeke, Col.1, line 18-20).

(B) As per claim 50, Kaplan discloses the method wherein the demographic and geographic information includes information regarding a consumer's zip code, country, favorite radio format, favorite radio station, gender, age, income, and education (Col.5, lines 4-25).

(C) As per claim 51, Kaplan discloses the method wherein: the plurality of music products includes a plurality of songs and a plurality of albums (Col.11, lines 11-67 to Col.12, line 67; Col.13, line 1-65); and the music information includes information identifying the songs and albums, information identifying genres associated with each song and album, and information identifying consumer rankings for songs and albums having predetermined characteristics (Col.11, lines 11-67 to Col.12, line 67; Col.13, line 1-65).

(D) As per claim 52, Kaplan discloses the method wherein the consumer music preference information includes at least one of the following types of voting category information: information indicating whether a consumer is familiar with a song or album (Col.13, lines 1-67 to Col.14, line 67); information indicating whether a consumer likes a song or album (Col.13, lines 1-67 to Col.14, line 67); information indicating whether a consumer is tired of a song or album (Col.16, lines 44-67 to Col.17, line 67); information


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indicating whether a consumer owns a CD or cassette containing a song or album (Col.15, lines 40-67 to Col.16, line 67); information indicating whether a consumer would like to hear a song of album on their favorite radio station (Col.8, lines 33-67; Col.12, lines 3-67 to Col.13, line 50); information indicating where a consumer first heard a song or album (Col.12, lines 3-67 to Col.13, line 50); or comments from a consumer (Col.16, lines 1-67).

(E) As per claim 53, Leeke discloses the method wherein the music information includes customer rankings for songs that are less than 26 weeks old and that are being actively promoted by a record label, for songs that are more than 26 weeks old but less than 52 weeks old, and for songs that are less than 26 weeks old and that are no longer being actively promoted by a record label (See, Fig.12; Col.15, lines 30-67 to Col.16, line 67).

The motivation for combining the respective teachings of Kaplan and Leeke are as discussed above in the rejection of claims 49, and incorporated herein.

(F) As per claim 54, Leeke discloses the method wherein the music information includes consumer rankings for albums that are less than 52 weeks old and that are being actively promoted by a record label, and for albums that are more than 52 weeks old and that are still being actively promoted by a record label (See, Fig.12; Col.15, lines 30-67 to Col.16, line 67).



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The motivation for combining the respective teachings of Kaplan and Leeke are as discussed above in the rejection of claims 49, and incorporated herein.

(G) As per claim 55, Kaplan discloses the method wherein the record label interface allows a record label to search the consumer music preference information based on genre, artist name, song name, desired reporting period, desired demographic parameters, desired geographic parameters, and desired voting category information (Col.13, lines 1-67 to Col.14, line 67).

(H) As per claim 56, Kaplan discloses the method wherein the radio station interface allows a radio station to search the consumer music preference information based on genre, artist name, song name, desired reporting period, desired demographic parameters, desired geographic parameters, and desired voting category information (Col.13, lines 1-67 to Col.14, line 67).

(I) As per claim 57, Kaplan discloses the method wherein the music retailer interface allows a music retailer to search the consumer music preference information based on genre, artist name, song name, desired reporting period, desired demographic parameters, desired geographic parameters, and desired voting category parameters (Col.13, lines 1-67 to Col.14, line 67).

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(J) As per claim 58, Kaplan discloses the method wherein the record label interface only allows a record label to access consumer music preference information for music products having a predetermined format (Col.9, lines 36-67 to Col.10, line 30).

(K) As per claim 59, Kaplan discloses the method wherein the radio station interface only allows a radio station to access consumer music preference information for music products having a predetermined format (Col.9, lines 36-67 to Col.10, line 30).

(L) As per claim 60, Kaplan discloses the method wherein: the server computer system is adapted to receive and store email addresses for consumers opting to receive promotional emails from record labels, radio stations, or music retailers (Col.15, lines 5-67 to Col.16, line 67); the consumer interface is adapted to allow each one of the plurality of consumers to input an email address and information indicating that the consumer would like to receive promotional emails (Col.15, lines 5-67 to Col.16, line 67); and the method further includes the step of providing an administrator interface to the server computer system that allows an administrator to input music product information into the server computer system, to update music product information stored on the server computer system, to retrieve email addresses for consumers that have opted to receive promotional emails, to set up record label, radio station, and music retailer accounts, and to access and review consumer music preference information stored on the server computer system (Col.15, lines 5-67 to Col.16, line 67).

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(M) As per claim 61, Kaplan discloses a computer system, comprising: a server computer for receiving and storing demographic and geographic information associated with a plurality of consumers, for receiving and storing music information associated with a plurality of music products, for receiving and storing consumer music preference information associated with the plurality of music products and the plurality of consumers (See Kaplan, Col.4, lines 20-67 to Col.5, line 24; Col.15, line 40-67 to Col.16, line 67); a consumer interface to the server computer that allows the plurality of consumers to input demographic and geographic information into the server computer, to access and review music information regarding music products stored on the server computer, and to input consumer music preference information regarding the music products into the server computer (See Kaplan, Col.4, lines 20-67 to Col.5, line 24; Col.15, line 40-67 to Col.16, line 67); or a music retailer interface to the server computer that allows a music retailer to access all of the consumer music preference information stored on the server computer (See Kaplan, Col.4, lines 20-67 to Col.5, line 24; Col.15, line 40-67 to Col.16, line 67).

Kaplan does not explicitly disclose and at least one of the following: a record label interface to the server computer that allows a record label to access consumer music preference information associated with music products produced by the record label and stored on the server computer; a radio station interface to the server computer that allows a radio station to access consumer music preference information associated with music products used by the radio station and stored on the server computer.

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However, these features are known in the art, as evidenced by Leeke. In particular, Leeke suggests a record label interface to the server computer that allows a record label to access consumer music preference information associated with music products produced by the record label and stored on the server computer (See Leeke, Col.6, lines 3-67 to Col.7, line 37; Col.29, lines 4-67 to Col.30, line 67; Col.41, lines 12-67 to Col.42, line 67); a radio station interface to the server computer that allows a radio station to access consumer music preference information associated with music products used by the radio station and stored on the server computer (See Leeke, Col.6, lines 3-67 to Col.7, line 37; Col.29, lines 4-67 to Col.30, line 67; Col.41, lines 12-67 to Col.42, line 67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Leeke within the system of Kaplan with the motivation of providing archived items such as archived radio programs, speeches, and music via the Internet (See Leeke, Col.1, line 18-20).

(N) Claims 62-72 recite the underlying process steps of the elements of claims 50-60, respectively. As the various elements of claims 50-60 and have been shown to be either disclosed by or obvious in view of the collective teachings of Kaplan and Leeke, it is apparent that the apparatus disclosed by the applied prior art performs the recited underlying functions. As such, the limitations recited in claims 62-72 are rejected for the same reasons given above for method claims 62-72, and incorporated herein.

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(O) Claim 73 differs from claims 49 and 61 by reciting a method of determining: whether a consumer is familiar with a song being played on the radio, whether the consumer likes the song being played on the radio and whether the consumer is tired of hearing the song being played on the radio.

As per this limitation, Kaplan discloses the method comprising the steps of: (a) providing a computer system for storing information indicating whether the consumer is familiar with the song being played on the radio, whether the consumer likes the song being played on the radio and whether the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67); (b) providing a consumer interface to the computer system that allows the consumer to input the information indicating whether the consumer is familiar with the song being played on the radio, whether the consumer likes the song being played on the radio and whether the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67); (c) receiving the information indicating whether the consumer is familiar with the song being played on the radio, whether the consumer likes the song being played on the radio and whether the consumer is tired of hearing the song being played on the radio from the consumer through the consumer interface (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67) and Leeke discloses (d) analyzing the information received from the consumer to determine, if the consumer is familiar with the song being played on the radio, if the consumer likes the song being played on the radio and if the consumer is tired of hearing the song being played on the radio (Col.17, lines 4-67 to Col.18, line 67).

Thus, it is readily apparent these prior art systems utilize a method of determining: whether a consumer is familiar with a song being played on the radio, whether the consumer likes the song being played on the radio and whether the consumer is tired of hearing the song being played on the radio to perform their specified function.

The remainder of claim 73 is rejected for the same reason given above for claims 49 and 61, and incorporated herein.

(P) As per claim 74, Kaplan discloses the method wherein the consumer is familiar with the song being played on the radio, the method further determining how familiar the consumer is with the song being played on the radio, how much the consumer likes the song being played on the radio, and how tired the consumer is of hearing the song being played on the radio, wherein step (a) further includes providing the computer system for storing information indicating how familiar the consumer is with the song being played on the radio, how much the consumer likes the song being played on the radio, and how tired the consumer is of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (b) further includes providing the consumer interface to the computer system that allows the consumer to input the information indicating how familiar the consumer is with the song being played on the radio, how much the consumer likes the song being played on the radio, and how tired the consumer is of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (c) further

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includes receiving the information indicating how familiar the consumer is with the song being played on the radio, how much the consumer likes the song being played on the radio, and how tired the consumer is of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), and wherein step (d) further includes analyzing the information received from the consumer to determine how familiar the consumer is with the song being played on the radio, how much the consumer likes the song being played on the radio, and how tired the consumer is of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(Q) As per claim 75, Kaplan discloses the method the method for further determining whether the consumer owns a copy of the song that is being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (a) further includes providing the computer system for storing information indicating the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (b) further includes providing the consumer interface to the computer system that allows the consumer to input the information indicating whether the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (c) further includes receiving the information indicating whether the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), and wherein step (d) further includes analyzing the information received from the consumer to determine

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whether the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(R) As per claim 76, Kaplan discloses the method the method further comprising the step of comparing the information indicating whether the consumer owns a copy of the song being played on the radio with the information indicating whether the consumer is familiar with the song being played on the radio, whether the consumer likes the song being played on the radio and whether the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(S) As per claim 77, Kaplan discloses a method of determining whether a consumer is familiar with a song being played on the radio, comprising the steps of: (a) providing a computer system for storing information indicating whether the consumer is familiar with the song being played on the radio (Col.16, lines 1-67 to Col.17, line 67); (b) providing a consumer interface to the computer system that allows the consumer to input the information indicating whether the consumer is familiar with the song being played on the radio (Col.16, lines 1-67 to Col.17, line 67); (c) receiving the information indicating whether the consumer is familiar with the song being played on the radio from the consumer through the consumer interface (Col.16, lines 1-67 to Col.17, line 67).

Kaplan does not explicitly disclose (d) analyzing the information received from the consumer to determine if the consumer is familiar with the song being played on the radio.

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However, this feature is known in the art, as evidenced by Leeke. In particular, Leeke suggests analyzing the information received from the consumer to determine if the consumer is familiar with the song being played on the radio (Col.17, lines 4-67 to Col.18, line 67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Leeke within the system of Kaplan with the motivation of providing archived items such as archived radio programs, speeches, and music via the Internet (See Leeke, Col.1, line 18-20).

(T) As per claim 78, Kaplan discloses the method wherein the consumer is familiar with the song being played on the radio, the method further determining how familiar the consumer is with the song being played on the radio, wherein step (a) further includes providing the computer system for storing information indicating how familiar the consumer is with the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (b) further includes providing the consumer interface to the computer system that allows the consumer to input the information indicating how familiar the consumer is with the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (c) further includes receiving the information indicating how familiar the consumer is with the song being played on the radio from the consumer using the consumer interface (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), and wherein step (d) further includes analyzing the information received from the consumer to determine how familiar the consumer is

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with the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(U) As per claim 79, Kaplan discloses the method wherein the information indicating how familiar the consumer is with the song being played on the radio comprises a numerical score selected by the consumer (Col.18, lines 1-10).

(V) As per claim 80, Kaplan discloses the method wherein the consumer is not familiar with the song being played on the radio, the method further determining why the consumer is not familiar with the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (a) further includes providing the computer system for storing information indicating why the consumer is not familiar with the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (b) further includes providing the consumer interface to the computer system that allows the consumer to input the information indicating why the consumer is not familiar with the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (c) further includes receiving the information indicating why the consumer is not familiar with the song being played on the radio from the consumer using the consumer interface (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), and wherein step (d) further includes analyzing the information received from the consumer to determine why the consumer is not familiar with the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

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(W) As per claim 81, Kaplan discloses the method wherein the information indicating why the consumer is not familiar with the song being played on the radio comprises a response selected by the consumer from the group of responses including: the song being played on the radio is by new artist, the song being played on the radio is new single, the song being played on the radio was not heard on radio by the consumer, the song being played on the radio was not seen on music videos by the consumer, the consumer rarely listens to radio, other and combinations thereof (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(X) As per claim 84, Kaplan discloses a method of determining whether a consumer likes a song being played on the radio, comprising the steps of: (a) providing a computer system for storing information indicating whether the consumer likes the song being played on the radio (See Kaplan, Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67); (b) providing a consumer interface to the computer system that allows the consumer to input the information indicating whether the consumer likes the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67); (c) receiving the information indicating whether the consumer likes the song being played on the radio from the consumer through the consumer interface (Col.16, lines 1-67 to Col.17, line 67).

Kaplan does not explicitly disclose (d) analyzing the information received from the consumer to determine if the consumer likes the song being played on the radio.

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However, this feature is known in the art, as evidenced by Leeke. In particular, Leeke suggests analyzing the information received from the consumer to determine if the consumer likes the song being played on the radio (Col.17, lines 4-67 to Col.18, line 67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Leeke within the system of Kaplan with the motivation of providing archived items such as archived radio programs, speeches, and music via the Internet (See Leeke, Col.1, line 18-20).

(Y) As per claim 88, Kaplan discloses the method wherein the information indicating why the consumer does not like the song being played on the radio comprises a response selected by the consumer from the group of responses including: the consumer doesn't like the artist performing the song being played on the radio, the consumer doesn't like the melody of the song being played on the radio, the consumer doesn't like the lyrics of the song being played on the radio, the consumer finds the song being played on the radio to be noisy, the consumer find's the song the song being played on the radio to be annoying, the consumer finds the song being played on the radio to have an indistinct sound, other, and combinations thereof (See Kaplan, Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(Z) As per claim 90, Kaplan discloses the method further comprising the step of comparing the information indicating whether the consumer likes the song being played

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on the radio with the information indicating whether the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(AA) As per claim 91, Kaplan discloses a method of determining whether a consumer is tired of hearing a song being played on the radio, comprising the steps of: (a) providing a computer system for storing information indicating whether the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67); (b) providing a consumer interface to the computer system that allows the consumer to input the information indicating whether the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67); (c) receiving the information indicating whether the consumer is tired of hearing the song being played on the radio from the consumer through the consumer interface (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

Kaplan does not explicitly disclose (d) analyzing the information received from the consumer to determine if the consumer is tired of hearing the song being played on the radio.

However, this feature is known in the art, as evidenced by Leeke. In particular, Leeke suggests (d) analyzing the information received from the consumer to determine if the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Leeke within the system of Kaplan with the

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motivation of providing archived items such as archived radio programs, speeches, and music via the Internet (See Leeke, Col.1, line 18-20).

(BB) As per claim 93, Kaplan discloses the method the method further determining why the consumer is tired of hearing the song being played on the radio, wherein step (a) further includes providing the computer system for storing information indicating why the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (b) further includes providing the consumer interface to the computer system that allows the consumer to input the information indicating why the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (c) further includes receiving the information indicating why the consumer is tired of hearing the song being played on the radio from the consumer using the consumer interface (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), and wherein step (d) further includes analyzing the information received from the consumer to determine why the consumer is tired of hearing the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(CC) As per claim 94, Kaplan discloses the method wherein the information indicating why the consumer is tired of hearing the song being played on the radio comprises at least one response selected by the consumer from the group of responses including: the song is played on radio too often, the consumer is tired of the artist, the consumer

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never liked the song, the song is too old, the song has an indistinct sound, and other (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(DD) As per claim 95, Kaplan discloses the method the method further determining whether the consumer owns a copy of the song that is being played on the radio, wherein step (a) further includes providing the computer system for storing information indicating the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (b) further includes providing the consumer interface to the computer system that allows the consumer to input the information indicating whether the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), wherein step (c) further includes receiving the information indicating whether the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67), and wherein step (d) further includes analyzing the information received from the consumer to determine whether the consumer owns the song (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

(EE) As per claim 96, Kaplan discloses the method the method further comprising the step of comparing the information indicating whether the consumer is tired of hearing the song being played on the radio with the information indicating whether the consumer owns a copy of the song being played on the radio (Col.12, lines 3-67; Col.16, lines 1-67 to Col.17, line 67).

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(FF) Claims 82-83, 85-87, 89 and 92 recite the underlying process steps of the elements of claims 74-76 and 79, respectively. As the various elements of claims 74-76 and 79, and have been shown to be either disclosed by or obvious in view of the collective teachings of Kaplan and Leeke, it is apparent that the apparatus disclosed by the applied prior art performs the recited underlying functions. As such, the limitations recited in claims 82-83, 85-87, 89 and 92 are rejected for the same reasons given above for method claims 74-76 and 79 and incorporated herein.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 703-305-4952. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 703-305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

V.F

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April 3, 2004


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